

February 4, 2002

DIRECTIVES REVIEW REPORT

DOE Order 251.1A, Directives System

Originating Office for Directive: ME-80

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Background

DOE O 251.1A establishes the requirements for the development, coordination, and review of internal Directives System documents, including Policies, Orders, Notices, Manuals and Guides. This directive was part of the directives reduction effort which took place in 1995-1996 and was established in its current format at that time. The most recent approval date for an update was 1-30-98 and DOE O 251.1A has a review date of 1-30-00.

DOE O 251.1B, Directives Management System, was circulated for review and comment through the REVCOM system in June 2000, but has not been published as a final directive on the DOE directives web page. Both GC-61 and ME-61 provided comments at that time, but a revised draft has not been circulated through REVCOM or the Field Management Council. During the intervening period, GC-61 and ME-61 provided recommended template language for contractor applicability (subparagraph 3.b. of the standard format) to the ME Directives Management office. ME-80 is apparently working on a separate set of revisions to DOE O 251, but did not provide any of their drafted changes to the Review Team and, therefore, this report does not address those additional proposed changes.

Overview of Requirements

The purpose of DOE O 251 is to establish requirements for the development, coordination, and review of internal Directives System documents, including Policies, Orders, Notices, Manuals and Guides. The order and manual together establish a set of instructions to be followed by all program offices so that there is consistency and adequate coordination for all new directives documents.

The Contractor Requirements Document (CRD) describes the role of the contractor during the review and comment process for directives before they become final. This input during the drafting process is important to the Department's effort in reviewing the material contained in individual draft directives. Ideally, contractor input will also help the Department avoid redundancies and costly requirements that fail to provide added benefit.

Analysis

The comments from Energy Facilities Contractor Group (EFCOG) for DOE O 251 and DOE M 251 appear to be a review of each entire directive, and not just the CRD attached to DOE O 251. [Note, the manual does not have a CRD.] EFCOG also stated an opinion that these directives were mostly redundant with the Laws, regulations and directives contract clause, 48 CFR (DEAR) 970.5204-2. The Laws, regulations and directives clause is the means by which the Department attaches a CRD to its site and facility management contracts and turns the CRD requirements into contract requirements. The comments from the DOE National Laboratories Improvement Council DOE O 251 also appears to be a review of the entire directive, and not just the CRD. The Field Office comments also focused on the entire directive or failed to provide any specific recommendations for changes.

A team member reviewed the Department of Defense's (DOD's) directives web page and sampled some of the directives and instructions listed. The DOD directives system document (DOD Directive 5025.1) looks much like DOE O 251 (and DOE 5025.1-M looks much like DOE M 251). The DOD directives do not try to involve contractors in drafting or review or make the DOD Directives directly applicable to contractors. In the DOD directives system, procedures are usually set out in documents below a DOD Directive, such as an instruction, and this approach is comparable to DOE's tiered approach. DOD instructions, if potentially covering contractors, require DOD components to modify contracts to comply with requirements.

Summary Recommendations

1. Recommend deleting the CRD to DOE O 251.
2. Recommend the contractor applicability template language be added as an attachment to DOE O 251. See Attachment A to this Report.
3. Recommend CRD Drafting Guidelines be added as an attachment to DOE O 251. See Attachment B to this Report.

Minority Views

None stated by team members.

Originating Office Comments

Comments were received in response to the Draft Report from the Originating Office, ME-80. The Draft Report recommended retention of the CRD. ME-80 stated an opinion that the CRD should be eliminated and further discussion took place on that issue. The existing CRD requires contractor participation in the REVCOM comment process. Deletion of the CRD leaves the decision to participate in the review and comment process up to the discretion of the contractor. This seems to be a policy decision consistent with the current requirements reduction effort. The Draft Report has been amended and this Report now recommends deletion of the CRD.

ATTACHMENT A

Contractor Applicability Template Language

3. Applicability

b. Contractors.

(1) The Contractor Requirements Document (CRD), Attachment 1, sets forth requirements of this Order that will apply to site/facility management contracts that include the CRD.

(2) This CRD must be included in site/facilities management contracts that _____
[HERE THE OPI MUST FILL IN THE CRITERIA THAT IDENTIFY WHICH SPECIFIC MAJOR FACILITIES OR CATEGORY OF FACILITIES THE OPI INTENDS THE ORDER APPLY.]

IF THE OPI INTENDS THE CRD TO APPLY TO ONLY CERTAIN TYPES OF WORK WITHIN A CONTRACT, THE OPI MUST DESCRIBE THAT WORK TYPE HERE.
THE OPI MUST ALSO ARTICULATE HERE WHAT AUTHORITY IS GRANTED TO AN OFFICIAL IDENTIFIED IN THE RESPONSIBILITIES PARAGRAPH TO MODIFY THE CRD.]

(3) This Order does not apply to other than site/facility management contracts. Any application of any requirements of this Order to other than site/facility management contracts will be communicated separately from this Order.

(4) The official identified in the Responsibilities paragraph is responsible for notifying the contracting officer of which site/facility management contracts are affected. Once notified, the contracting officer is responsible for incorporating the CRD into the affected site/facility management contracts via the Laws, regulations, and DOE directives clauses of the contracts. See 48 CFR (DEAR) 970.5204-2. The Laws, regulations and directives clause is the means by which the Department attaches a CRD to its site and facility management contracts and turns the CRD requirements into contract requirements.

(5) As the Laws, regulations, and DOE directives clause of site/facility management contracts states, regardless of the performer of the work, site/facility management contractors with the CRD incorporated into their contracts are responsible for compliance with the requirements of the CRD. Affected site/facility management contractors are responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the site/facility management contractors' compliance with the requirements.

ATTACHMENT B

CRD DRAFTING GUIDELINES

General guidelines for drafting contractor requirements documents (CRDs):

1. Any requirements from the main text of the directive to be applied to a contractor must be specifically stated in the CRD. The text of the directive, or any other directive, cannot be incorporated by reference. A citation to a different directive or a regulation may be provided at the end of a sentence or paragraph as a reference, preferably in brackets.
2. Opening language in the CRD should prepare the document to be directly attached to the contract. Chances are the CRD will be attached to the contract without any further modification. The current model language for the opening paragraph of the CRD is as follows:

"Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this CRD. The contractor is responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements. The contractor shall:"
3. The only group or category of contractors intended to be covered by the directives system are site/facility management contractors. The mechanism for inserting or attaching CRDs to a contract is the clause at 48 CFR (DEAR) 970.5204-2, Laws, regulations and directives. The Laws, regulations and directives clause is the means by which the Department attaches a CRD to its site and facility management contracts and turns the CRD requirements into contract requirements.
4. Directives cannot be made applicable to contractor employees. There is no privity of relationship between DOE and contractor employees. Instead, in the CRD the contractor is responsible for the conduct and actions of its employees.
5. Statutes and regulations that are self implementing should not be incorporated by reference either generally or specifically. However, where there are regulations which would not otherwise apply to a contractor activity which DOE wishes to apply to a contractor activity, that regulation may be incorporated by reference in the CRD if it is too lengthy to be restated in the CRD. The citation should be as specific as possible.
6. If a statute, regulation or directive is referenced in the CRD, it should usually appear as a notation, in brackets, after the end of the sentence or paragraph. An exception to this practice is stated in paragraph 5 above.